

United States Courts
Southern District of Texas
FILED

APR 23 2025

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Nathan Ochsner, Clerk of Court

DARRON PEACOCK

V.

TAKE 5 PROPERTIES SPV LLC

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§

CIVIL ACTION NO. _____

NOTICE OF REMOVAL

Defendant Take 5 Properties SPV LLC ("Take 5") (incorrectly named as Take 5 Oil Change, L.L.C) files this Notice of Removal pursuant to 28 U.S.C. § 1332(a) and 28 U.S.C. § 1446(a) to remove the present action to the United States District Court for the Southern District of Texas, Southern Division, and states as follows:

INTRODUCTION

1. This personal injury lawsuit was initiated on March 20, 2025, when Plaintiff Darron Peacock ("Plaintiff") filed his Original Petition in Cause No. 2025-19036 in the 152nd Judicial District Court of Harris County, Texas against Defendant Take 5 Oil Change, L.L.C. ("Take 5").¹ The suit arises from an alleged slip and fall incident that occurred on or about May 2, 2024 in Harris County, Texas (the "Incident").

2. Take 5 was served with Plaintiff's Original Petition on March 24, 2025.² Take 5 filed its Original Answer in the 152nd Judicial District Court, Harris County, Texas on April 14, 2025.³ Take 5 was incorrectly sued as Take 5 Oil Change, L.L.C., which is a terminated Louisiana entity.⁴ Take 5 Properties SPV, LLC is the appropriate entity.⁵ Accordingly, Take

¹ See Exhibit A, Plaintiffs' Original Petition, attached hereto and incorporated herein.

² See Exhibit B, Return of Service.

³ See Exhibit C, Take 5's Original Answer.

⁴ *Id.*

⁵ *Id.*; see also Exhibit D, Declaration of Emily Wang, incorporated herein

5 moved to abate. Take 5 now files removal on April 23, 2025, within the 30-day time period required by 28 U.S.C. § 1446(b)(1).

GROUND FOR REMOVAL—DIVERSITY OF CITIZENSHIP

3. Removal is proper because there is complete diversity of citizenship between the parties and the alleged amount in controversy exceeds \$75,000, exclusively of interest and costs. See 28 U.S.C. § 1332(a) (1). Specifically:

- a. According to Plaintiff's Original Petition, Plaintiff is a resident and citizen of Harris County, Texas.⁶
- b. Take 5 is a Delaware corporation with its principal office in Charlotte, North Carolina.⁷ Take 5's only member or owner is also a Delaware LLC with its principal office in Charlotte, North Carolina.⁸ The ownership all the way to Driven Brands, Inc. is all Delaware LLC's with principal offices in Charlotte, North Carolina.⁹ Driven Brands, Inc. is a Delaware corporation, with its principal office in Charlotte, North Carolina.¹⁰
- c. Accordingly, with regard to Take 5 and Plaintiff, there is complete diversity. There are no other parties to this lawsuit.
- d. Plaintiff's Original Petition states that Plaintiff seeks monetary relief over \$250,000.00, but not more than \$1,000,000.00, which exceeds the amount in controversy requirement.¹¹

VENUE IN THE SOUTHERN DISTRICT IS PROPER

4. Plaintiff filed this action in Harris County, Texas. The Houston Division of the Southern District of Texas encompasses Harris County, Texas. See 28 U.S.C § 124(b)(2). Thus, this district and division embrace the place where the state court action is pending. See 28 U.S.C. §1441(a).

⁶ *Id.*, at p.1.

⁷ See Exhibit D, Declaration of Emily Wang.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

PROCEDURAL REQUIREMENTS FOR REMOVAL

5. Take 5 was served with citation on March 24, 2025. This Notice of Removal is filed on April 23, 2025. Therefore, this Notice of Removal is timely filed within 30 days of when Defendant received Plaintiff's Original Petition and within one year of the commencement of this suit. See 28 U.S.C. § 1446(b). Take 5 by this filing consented to the removal of this case to federal court and there are no other Defendants.

NOTICE TO STATE DISTRICT COURT AND PLAINTIFF

6. Take 5's Notice of Removal has been served upon Plaintiff through his counsel by Notice of Filing/E-File along with email service. Take 5 will file a copy of this Notice of Removal with the Clerk of the 152nd Judicial District Court of Harris County which serves immediately to confer exclusive jurisdiction of this cause upon this Court, and divests the state court of all jurisdiction over these proceedings and claims.

7. The filing fee has been paid to the Clerk.

JURY DEMAND

8. Both parties demanded a jury trial in the state court proceeding.

INDEX OF EXHIBITS FILED

9. Pursuant to 28 U.S.C. § 1446(a), this Notice of Removal is accompanied by the following documents:

- Exhibit A: Plaintiff's Original Petition;
- Exhibit B: Citation of Service;
- Exhibit C: Defendant Take 5's Original Answer;
- Exhibit D: Declaration of Emily Wang;

¹¹ See Plaintiff's Original Petition, at p.5.


- Exhibit E: An index of matters being filed;
- Exhibit F: All executed process in the case, all pleadings asserting causes of action and all answers to such pleadings;
- Exhibit G: A list of all counsel of record, including addresses, telephone numbers, and parties represented.
- Exhibit H: Docket sheet of state court action

CONCLUSION

10. Take 5 prays that this action be removed to this Court because of the diversity of parties, that this Court accept jurisdiction of this action in its entirety, and that this action be placed on the docket of the Court for further proceedings as though this action had been initially instituted in this Court.

11. This Notice of Removal is filed subject to and without waiver of any defenses or objections to Plaintiff's Original Petition or First Amended Petition as allowed by the Federal Rules of Civil Procedure or by any applicable law.

Respectfully submitted,

By: 
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ATTORNEYS FOR DEFENDANT
TAKE 5 PROPERTIES SPV LLC
(incorrectly named as Take 5 Oil Change, L.L.C)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was forwarded to all known counsel of record pursuant to the Federal and Texas Rules of Civil Procedure on this 23rd day of April, 2025.



ELIZABETH "LISA" MASSEY